

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4557 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BACHUBHAI SARADBHAI VASAVA

Versus

STATE OF GUJARAT

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Appearance:

MR SHAILESH C PARIKH for Petitioner  
MR MA BUKHARI ASSTT.GOVERNMENT PLEADER  
for Respondent Nos.1,2 and 3.  
MR CB DASTOOR for Respondent No. 4

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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 01/09/97

ORAL JUDGEMENT

Heard Mr. Parikh for the petitioner, Mr. Bukhari, AGP for the respondent nos.1,2 and 3 and Mr.Dastoor for the respondent no.4. Rule on the petition. Both the learned advocates for the respondents waive the service of rule on behalf of the respective parties. The learned advocates have made their submissions.

2. The case of the petitioner is that he was cultivating the disputed land under the permission granted by the Forest Department, in the same way as was

granted as to one Madhav Kala. [ The respondent no.4 claims to be the son of one Bai Bhuriben widow of Madhavbhai which is disputed by the petitioner]. The petitioner, therefore, seeks a protection under Sec. 73AA(b)(i) of the Land Revenue Code. It is also the case of the petitioner that he purchased 12 Gunthas of disputed land from Bhuriben.

3. This Bhuriben initiated proceedings to set aside the said sale, contending that she was an illiterate lady and the sale was not binding on her and that even the sale from tribal to tribal is bad under Sec.73AA of the Act. It appears that in that proceedings, the Deputy Collector of Rajpipla, District Bharuch, granted protection to the respondent no.4 as a tenant under Sec. 73AA(b)(i) of the Act, by his order dt. 31/7/1990. Bhuriben carried the matter in appeal to the Collector and Collector reversed that order under the substantive provisions of Sec.73AA by his order dt. 9/8/1991. A further revision was preferred by the petitioner before the Revenue Secretary under Sec.211 of the Land Revenue Code. However, before that proceeding could be decided, the petitioner filed a civil suit being Regular Civil Suit No. 335 of 1992 in the court of learned Civil Judge (Senior Division), Bharuch and in that, the petitioner obtained ad-interim injunction to protect his possession, which has been running since then. Now the petitioner has chosen to challenge the order passed in the aforesaid revision by the Revenue Secretary, on 28/8/1992, as also the subsequent revision decided on 21/6/1997. The subsequent revision was held to be barred by res judicata.

4. After the matter was heard for sometime, it is now agreed between Mr. Parikh and Mr. Dastoor that the proper course will be to go back to the Deputy Collector for both the purposes namely to decide (1) as to whether the petitioner was a protected tenant and in any way entitled to the protection under Sec.73AA(b)(i) of the Bombay Land Revenue Code; and (2) also additionally whether the sale of the land in his favour was valid. There is some controversy as to whether the Dy.Collector can exercise the power. Hence the remand will be to the Collector. The Collector may, if he deems fit, appoint the Mamlatdar to record evidence but the matter will be decided by the Collector. As far as second submission is concerned, according to Mr.Dastoor, the sale from tribal to tribal is completely barred by the said Sec.73AA of the Act, whereas Mr. Parikh submitted that during a certain period, it was permitted. Mr. Dastoor has a number of submissions with respect to the sale based on

the date on which stamp paper was purchased, signature of parties etc. Since the proceeding before the Deputy Collector was initiated by Bhuriben, as far as second issue is concerned namely validity of the sale, it will be for the respondent no.4 to lead evidence to show that the sale was not valid and the burden will be on him. As against that, as far as the submission based on tenancy and Sec.73AA(b)(i) is concerned, the burden with respect thereto will be on the petitioner. This is because it is the petitioner who will have to produce the evidence to show that his father was cultivating the particular land for whatever number of years based on the documentary as well oral evidence which the respondent no.4 may rebut by leading counter evidence.

5. Mr. Parikh makes a statement that the petitioner will withdraw the above referred civil suit filed in the court of Civil Judge (Senior Division), within two weeks from today and will produce the copy of the order of withdrawal before the Collector. Since the matter is old one, both the parties will appear before the Collector on 6th October, 1997. As stated above, the aforesaid are the two issues to be decided by the Collector and it is also indicated as to on whom the burden lies. The parties will be at liberty to lead the evidence oral as well as documentary on both the issues, before the Collector. All the orders passed in the revenue proceedings so far namely the above referred order of the Deputy Collector, the subsequent order of the Collector and the orders passed in revisions are hereby quashed and set aside. The Collector will proceed to decide and dispose of the matter expeditiously and preferably within four months from 6th October, 1997. During pendency and disposal of the proceedings before the Collector, present status quo will continue namely the status quo operating on the basis of interim protective order passed by the Civil Judge (S.D.). Rule is made absolute accordingly, with no order as to costs.

Direct service is permitted.

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(ccs)